



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/684,023	10/10/2003	Mario J. Bravomalo	29471.4	3171
716	7590	05/13/2008		
COX SMITH MATTHEWS INCORPORATED 112 EAST PECAN STREET, SUITE 1800 SAN ANTONIO, TX 78205-1521				
			EXAMINER	
			PATEL, JAYESH A	
			ART UNIT	PAPER NUMBER
			2624	
			MAIL DATE	DELIVERY MODE
			05/13/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/684,023	BRAVOMALO ET AL.	
	Examiner	Art Unit	
	JAYESH A. PATEL	2624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 13 March 2008.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-74 is/are pending in the application.

4a) Of the above claim(s) 1-50 is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 51-53,55,57-59 and 67-73 is/are rejected.

7) Claim(s) 54,56 and 60-66 is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 10 October 2003 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.

5) Notice of Informal Patent Application

6) Other: _____.

DETAILED ACTION

1. The Amendments to the Claims have been entered. Claims 1-50 have been cancelled. Applicants amendments necessitated new grounds of rejections.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 51-53, 55, 57-59, 67,72-74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Posa (US 20030108851) hereafter Posa in view of Takeuchi et al (US 5267154) hereafter Takeuchi.

Regarding Claim 51, Posa discloses a method (**Figs 1 and 2**) for producing an image predictive of a person's appearance resulting from following a prescribed regimen, said method comprising:

receiving a first data set associated with said person; said first data set comprising a body shape designation (**an initial weight measurement, a height measurement, a gender designation at Page 2 Para 0026 are the body shape designation describing how fat or thin by weight, how tall or short by**

height and also in abstract, Page 1 Para 0005 also discloses body shape designation);

receiving a second data set comprising at least one goal desired from said regimen (**Page 1 Para 0010,0011 and Page 2 Para 0013, 0014 where the desired data set is entered by the client or person an the images are modified accordingly as seen in Fig 2.);**

creating a second image representative of said person in a post-regimen condition by modifying said first image based on said second data set (**Page 2 Paras 0013 to 0020**). Posa discloses that the remote server creates a stereoscopic representation of the person using the recorded images and allowing the stereoscopic images to be modified by the modified measurements at (**Page 2 Para 0017**), however do not disclose creating a first image representative of said person in a pre-regimen condition by modifying a generic image based on said first data set.

Takeuchi discloses creating a first image representative of said person in a pre-regimen condition by modifying a generic image based on said first data set at (**Fig 3A, Col 2 Lines 41-51, Col 5 Lines 26 -67 and Col 8 Lines 35-67 through Col 9 Lines 1-3**). Takeuchi further discloses at (**Col 10 Lines 45 through Col 11 Lines 2**) where the generic (**biological**) image is modified based on the data such as age, height, weight (body shape designations) etc. Posa and Takeuchi are combinable because they are from the same field of endeavor and are analogous art. The suggestion/motivation would be the

disclosed method and system produces a realistic and individuality (looks like an individual) image by computing less data at (**Col 1 Lines 10-14, 32 and 59-61**). Therefore it would have been obvious for one of ordinary skill in the art at the time the invention is made to have used the teachings of Takeuchi in the method and system of Posa for the above reasons. Takeuchi also discloses creating a first image representative of said person in a pre-regimen condition by modifying a generic image based on said first data set at (**Fig 3A, Col 2 Lines 41-51, Col 5 Lines 26 -67 and Col 8 Lines 35-67 through Col 9 Lines 1-3**). Takeuchi further discloses at (**Col 4 Lines 1-43, Col 10 Lines 45 through Col 11 Lines 2**) where the generic (**biological**) image is modified (**Col 2 Lines 35-40 where the editing by the producer**) based on the data such as age, height, weight (**body shape designations**) etc; adjusting said first image by increasing or decreasing at least one of a representation of an amount of fat or a representation of an amount of muscle independently of the other (**Fig 14 where the muscles of the hand are shown**).

Regarding Claim 52, Posa and Takeuchi discloses the method of claim 51. Posa disclose the body shape designations and is silent and however does not expressly disclose wherein said body shape designation is selected from pear- shaped (**top portion slim and middle part wide**), apple-shaped (**middle part of the body wide**), and straight-shaped (**skinny all the way like a skeleton**). Takeuchui disclose said body shape designation is selected from

pear- shaped, apple-shaped, and straight-shaped (**Figs 10-12 and 14**). The editing of images is based on the shapes of the individual.

Regarding Claim 53, Posa and Takeuchi discloses the method of claim 51. Posa discloses further comprising calculating an ideal weight and an estimated body fat percentage for said person at (**Page1 Para 0005**).

Regarding Claim 55, Posa and Takeuchi discloses the method of claim 51. Posa further disclose wherein said creating a second image comprises calculation of an age factor (**Page 2 Para 0026 where the data collected is used in creating the image**).

Regarding Claim 57, Posa and Takeuchi disclose the method of claim 51. Posa further disclose wherein said at least one goal is selected from the group consisting of weight loss, muscle gain (**body building**), and a combination of weight loss and muscle gain at (**Page 1 Para 0001 and Para 0005**).

Regarding Claim 58, Posa and Takeuchi disclose the method of claim 51. Posa further disclose wherein said regimen comprises at least one of the following: resistance exercise, cardiovascular exercise, nutrition planning, dietary supplement intake, and personal training at (**Page 1 Para 0010**).

Regarding Claim 59, Posa and Takeuchi disclose the method of claim 51. Posa further disclose wherein said at least one goal comprises muscle gain and wherein said muscle gain (body building at Para 0001) is calculated based on at least one of the following factors: a base muscle gain factor; a supplement boost factor; a resistance compliance factor; an age factor; a nutrition factor (calorie intake); and a gender factor at (**Paras 0010, 0011, 0026 and 0029**) where age diet and gender are used for creating the images with respect to the muscle gain or (**body building**) program.

Regarding Claim 67, Posa and Takeuchi disclose the method of claim 53. Posa further disclose comprising recalculating said body fat percentage to account for fat loss or muscle gain resulting from said regimen in (**Para 0005**) where the difference is determined between before and after images. Posa discloses the difference and this is calculated based on the calculation and recalculation in the before and the after images. Posa further discloses determining the progress level of the person at intervals during the program in **para 0005** which is recalculating the body fat percentage.

Regarding Claim 72, Posa and Takeuchi disclose the method of claim 51. Posa disclose further comprising: adjusting said first image by independently adjusting (**providing a program to achieve a desired body shape (body building), exercise program will adjust the muscle and body fat in Para 0005**

and 0001) at least one of a muscle layer and a fat layer. Posa disclose taking the difference by comparing with the initial body parameter to calculate the progress.

Regarding Claim 73, Posa discloses a method (**Figs 1 and 2**) for producing an image predictive of a person's appearance resulting from following a prescribed regimen, said method comprising:

receiving a first data set associated with said person (**an initial weight measurement, a height measurement, a gender designation at Page 2 Para 0026 are the body shape designation describing how fat or thin by weight, how tall or short by height and also in abstract, Page 1 Para 0005 also discloses body shape designation**);

receiving a second data set comprising at least one goal desired from said regimen (**Page 1 Para 0010,0011 and Page 2 Para 0013, 0014 where the desired data set is entered by the client or person an the images are modified accordingly as seen in Fig 2.**);

creating a second image representative of said person in a post-regimen condition by modifying said first image based on said second data set (**Page 2 Paras 0013 to 0020**). Posa discloses that the remote server creates a stereoscopic representation of the person using the recorded images and allowing the stereoscopic images to be modified by the modified measurements at (**Page 2 Para 0017**), however do not disclose creating a first image representative of said person in a pre-regimen condition by modifying a generic

image based on said first data set; adjusting said first image by increasing or decreasing at least one of a representation of an amount of fat or a representation of an amount of muscle independently of the other.

Takeuchi discloses creating a first image representative of said person in a pre-regimen condition by modifying a generic image based on said first data set at (**Fig 3A, Col 2 Lines 41-51, Col 5 Lines 26 -67 and Col 8 Lines 35-67 through Col 9 Lines 1-3**). Takeuchi further discloses at (**Col 4 Lines 1-43, Col 10 Lines 45 through Col 11 Lines 2**) where the generic (**biological**) image is modified (**Col 2 Lines 35-40 where the editing by the producer**) based on the data such as age, height, weight etc; adjusting said first image by increasing or decreasing at least one of a representation of an amount of fat or a representation of an amount of muscle independently of the other (**Fig 14 where the muscles of the hand are shown**). Posa and Takeuchi are combinable because they are from the same field of endeavor and are analogous art. The suggestion/motivation would be the disclosed method and system produces a realistic and individuality (looks like an individual) image by computing less data at (**Col 1 Lines 10-14, 32 and 59-61**). Therefore it would have been obvious for one of ordinary skill in the art at the time the invention is made to have used the teachings of Takeuchi in the method and system of Posa for the above reasons.

Regarding Claim 74, Posa and Takeuchi disclose the method of claim 73. Takeuchi disclose further wherein said adjusting (editing) is performed by moving

a slider bar in a graphical user interface (**Figs 10-14 where the arrows with the slider bars are used to edit the images**).

3. Claims 68-71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Posa in view of Takeuchi and in further view of Abrams et al. (US 5673691) hereafter Abrams.

Regarding Claim 68, Posa and Takeuchi disclose the method of claim 51. Posa further disclose that his invention is an improvement in health related monitoring in para 0004. Posa and Takeuchi however do not disclose further comprising the step of estimating at least one health risk for said person in said pre-regimen condition.

Abrams disclose a method and apparatus that monitor weight loss program that reduce and control diabetes, stress, hypertension and other health conditions at (**Col 5 Lines 40-43**) which would comprise estimating at least one health risk for said person in said pre-regimen condition. Posa, Takeuchi and Abrams are combinable because they are from the same field of endeavor and are analogous art. The suggestion/motivation would be precision, flexibility and immediacy in weight monitoring and caloric adjustment by dynamically adjusting the weight and the behavior at (**Col 5 Lines 19-29**) as disclosed by Abrams. Therefore it would have been obvious for one of ordinary skill in the art at the time the invention was made to have used the teachings of Abrams of provide

appropriate warnings and adjustments in the method and apparatus of Posa and Takeuchi for the above reasons.

Regarding Claim 69, see the explanation of Claim 68.

Regarding Claim 70, see the explanation of Claim 68.

Regarding Claim 71, see the explanation of Claim 68.

Allowable Subject Matter

Claims 54,56,60-66 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAYESH A. PATEL whose telephone number is (571)270-1227. The examiner can normally be reached on M-F 7.00am to 4.30 pm (5-4-9). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bhavesh Mehta can be reached on 571-272-7453. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

05/06/2008
/Jayesh A Patel/
Examiner, Art Unit 2624

**/YOSEF KASSA/
Primary Examiner, Art Unit 2624**